IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 722 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHEBUBMIA NANUMIA

Versus

KHATIJANBIBI WD/OF GULAM H MOHMED TAKHI

Appearance:

1. Civil Revision Application No. 722 of 1987

MR KV SHELAT for Petitioner No. 1

MR MH BAREJIA for Respondent No. 1

MR PS CHAMPANERI for Respondent No. 1/1-1/9

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/02/2004

ORAL JUDGEMENT

The petitioner herein is the original defendant, against whom original plaintiff had filed a suit for getting decree for possession on the ground of arrears of rent. The said suit was registered as H.R.P. Suit No.3659/1975. The Small Causes Court, Ahmedabad, by its judgement and decree dated 10-1-1980 decreed the said suit for possession. Against the said decree, the

original defendant preferred an appeal before the Appellate Bench of the Small Causes Court, being Civil Appeal No.169/1980. It seems that during the pendency of the said appeal, the original plaintiff of the suit, who was the respondent in the said appeal, had died and his heirs were not brought on record before the Appellate Bench. The advocate for the original appellant submitted that he has no instructions to appear and requested the Court to allow him to retire from the proceedings. However, it seems that after the notice was served by the registry, the original appellant before the Small Causes Court, engaged another advocate and no steps were taken for bringing heirs of original respondent on record. Ultimately, the appellate Bench disposed of the said appeal on the ground that the heirs of the original plaintiff landlady were not brought on record, even though she has died on 30th March, 1983. The appeal was accordingly disposed of on 1-8-1984. Thereafter, the heirs of the original plaintiff filed execution application and warrant for possession was also issued. At that stage, according to the present petitioner, they realised the fact that the appeal was disposed of on the ground stated in the order and ultimately, they filed this revision application before this Court, which is admitted by this Court long back.

2) During the pendency of this revision, one of the heirs of respondent has also died and his heirs are also brought on record. It is argued by Mr.Shelat, appearing for the original defendant of the suit, that since the petitioner was not having any knowledge about the death of the respondent-landlady, no application was made before the appellate bench for bringing the heirs on record and even the lawyer has not informed the aforesaid fact that the appeal was disposed of by the bench on that ground. He submitted that in the interest of justice, the petitioner may be permitted to proceed with the main appeal pending before the appellate bench of the Small Causes Court, by setting aside the abatement order and by allowing the heirs of the original plaintiff-landlady to be brought on record.

3) Considering the fact that this revision is pending before this Court since 1987 and considering the argument of Mr.Shelat for the petitioner that the advocate of the petitioner had never informed the petitioner that any application for bringing on record the heirs of the deceased plaintiff was required to be preferred, as, the original-plaintiff landlady has died, in my view, the petitioner be allowed to move appropriate application before the appellate bench for setting aside

the abatement and also for bringing on record the heirs of original plaintiff-landlady, in order to complete the cause title of the appeal which was preferred by the present petitioner before the appellate bench. Mr.Champaneri, who is appearing for the respondent, has fairly submitted that his clients have no objection if the order of the appellate bench, disposing of the said appeal, be set aside. He further stated that his clients have no objection if the petitioner is permitted to bring heirs of the deceased plaintiff on the record of the original Civil Appeal No.169/1980. In view of the consent given by the other side, following order is passed.

This Revision Application is allowed. The petitioner herein is permitted to file appropriate application immediately for bringing on record heirs of original plaintiff, i.e. deceased Khatijabibi Wd/o. Gulam Husain Mohmed Takhi. Mr.Champaneri for the respondent has conceded that his client has no objection if the heirs are allowed to be brought on record and also if the abatement order of the appellate bench is set aside. Accordingly, the appellate Bench may allow such application for bringing heirs of original respondent on record as well as may pass the order for setting aside the abatement of the appeal. It is clarified that this part of the order is passed with the consent of both the sides. After said heirs are brought on record by the order of the appellate bench, the appellate bench shall immediately proceed with Civil Appeal No.169/1980 and the said appeal be disposed of latest by 30th April, 2004 without any further delay. Mr.Shelat as well as Mr.Champaneri both have agreed before this Court that their client will not ask for any adjournment from the appellate bench and their clients will cooperate for the disposal of the said appeal, within the stipulated time. Mr.Champaneri has agreed that he will see to it that if any application is made before the appellate Bench of the Small Causes Court, the concerned advocate representing his client appears before the Court, in order to see that the matter is not further delayed. Mr.Shelat has assured the Court that the copy of the application, which is to be preferred, will be given in advance to Mr.Champaneri, so that the matter is not further delayed and the same may be disposed of within the stipulated time.

The petitioner is directed to move appropriate application for bringing heirs on record as well as he is permitted to move an application for setting aside abatement of the appeal by 25th February, 2004 and thereafter, the Court may pass appropriate order

regarding bringing heirs on record, as well as for setting aside the abatement of the appeal. After such procedure is completed, appeal may be taken up immediately for hearing and the same may be disposed of within the stipulated time. It is once again clarified that the order, in connection with setting aside abatement, as well as for bringing heirs on record, is passed with the consent of the other side. The appellate Bench shall now proceed with the said appeal as per the observations made in this order.

4) Accordingly, this Civil Revision Application is allowed to the aforesaid extent. Rule is made absolute accordingly, with no order as to costs.

5) Writ be sent to the appellate bench of the Small Causes Court, Ahmedabad, forthwith. As the matter is required to be decided within the stipulated time, petitioner is also permitted to take direct service of writ of this Court for submitting the same before the appellate Bench.

(P.B.Majmudar,J.)
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